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September 23, 2004

VIA ELECTRONIC FILING

Marlene M. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Meeting by Core Communications, Inc.; WC Docket No. 03-171 and CC Docket Nos. 96-98, 99-68, and 01-92

Dear Ms. Dortch:

Pursuant to section 1.1206 of the Commission's rules, I hereby submit in the above-captioned proceedings this notice of an *ex parte* meeting held on September 22, 2004 between Bret Mingo, Chris Van de Verg, and myself on behalf of Core Communications, Inc. ("Core"), and Christopher Libertelli, Chairman Powell's Senior Legal Advisor, and Aaron Goldschmidt of the Wireless Telecommunications Bureau. During the meeting, Core explained that ISP-bound traffic falls within section 251(b)(5) of the Communications Act, and any decision that goes beyond section 251(b)(5) risks a third remand on appeal.

Core noted that any jurisdictional theory developed by the Commission under section 201 of the Act would require the identification of an interstate telecommunications service provided by a common carrier. ISPs purchase local telephone exchange service from local exchange carriers, and accordingly, ISPs as a general matter simply do not purchase interstate telecommunications services from common carriers to receive calls from their customers.

Furthermore, Core noted that use of section 201, even in part, to regulate ISP-bound traffic would provide little help to the Commission's effort to harmonize all intercarrier compensation regimes, as intrastate access traffic and local voice traffic similarly do not fall within section 201. Again, only activities of common carriers associated with their provision of interstate telecommunications services fall within section 201. To address the limits of section 201, Core suggested that the Commission's section 253 preemption power provides a more effective statutory means for rate harmonization. Core also noted that a partial grant of its forbearance petition could provide the Commission with the result it is seeking without having to rely on a jurisdictional theory impermissibly grounded in section 201 of the Act.

In addition to the jurisdictional problems associated with any section 201 theory, Core stated that regulating ISP-bound traffic under section 201 would run contrary to the Commission's effort to maintain regulatory distinctions between information services and telecommunications services, including those set forth in the Commission's petition for certiorari to the Supreme Court for review of the Ninth Circuit's decision in *Brand X v. FCC*, 345 F.3d 1120 (2003).

Core also identified a number of potential implementation issues associated with adoption of any section 201 theory for ISP-bound traffic, including those associated with implementing and enforcing any such Commission order. All views expressed by Core were consistent with its September 14 and September 16 letters filed in CC Docket Nos. 01-92, 99-68, and 96-98, which Core distributed during the meeting.

If you have any additional questions, please contact the undersigned.

Sincerely,

Michael B. Hazzard /emc

Michael B. Hazzard
Counsel for Core Communication, Inc.

Enclosures

cc: Christopher Libertelli (electronic mail)
Aaron Goldschmidt (electronic mail)

TAB A

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September 14, 2004

VIA ELECTRONIC FILING

Marlene M. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98; Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68

Dear Ms. Dortch:

Over the last several weeks, a large number of competitive carriers have advocated in favor of Commission use of section 251(b)(5) of the Communications Act ("Act"), 47 U.S.C. § 251(b)(5), to classify ISP-bound traffic. Indeed, the members of the Intercarrier Compensation Forum, including SBC, have stated that section 251(b)(5) is the proper statutory provision for unifying all intercarrier compensation regimes, including intercarrier compensation for ISP-bound traffic.

Two other carriers – BellSouth and Verizon – argue that the Commission should circumvent section 251(b)(5) and instead utilize the Act's general federal jurisdiction provision, 47 U.S.C. § 201, to classify ISP-bound traffic. The BellSouth/Verizon position rests entirely on the flawed assumption that calls to end users that are ISPs do not terminate at the ISP. Rather, BellSouth and Verizon assert that these calls continue on to some remote website or other location, and accordingly, are properly regulated under the Commission's section 201 authority.

The BellSouth/Verizon position is incorrect as a matter of law and policy. Foremost, as a matter of law, there can be no doubt that a call to an ISP terminates within the meaning of section 251(b)(5) at the ISP's premises, even if the ISP provides information services once it receives a call. Commission use of section 201 to assert jurisdiction over ISP bound traffic would thus be wrong as a matter of law and would contradict Commission policy by:

- Regulating information services, in this case Internet access, under Title II of the Act;

- Obliterating the distinction between "telecommunications services" and "information services" propounded by the Commission in its *Brand X* petition for a *writ of certiorai* to the Supreme Court[1]; and

- Creating additional regulatory uncertainty, which will likely result in continued litigation.

For all of these reasons, the Commission should reject the BellSouth/Verizon section 201 proposal, and instead use section 251(b)(5) as the statutory provision for addressing intercarrier compensation for ISP-bound traffic.

Background

In the Commission's original rules implementing sections 251 and 252 of the Act, the Commission concluded that local calls to ISPs were appropriately regulated under section 251(b)(5) of the Act, and no party appealed that conclusion. Indeed, at that time, even Verizon's predecessor company, Bell Atlantic, strongly supported keeping ISP-bound calls under section 251(b)(5).[2]

The legal rationale for classifying local calls to ISPs under the section 251(b)(5) umbrella has always been straightforward. ISPs buy telecommunications services from local exchange carriers ("LECs"), and other consumers use telecommunications services to contact ISPs. Once a call is terminated to an ISP, the ISP then provides unregulated information services to consumers, some of which reside on the ISP's local servers (*e.g.*, email, cached content) and some of which may be remote. The critical point, however, is that a clear demarcation point – indeed, a termination point – exists between the provision of the telecommunications service and the provision of the information service. Acting as end users, the consumer and the ISP purchase telecommunications services to communicate with one another. Acting as an unregulated information services provider, the ISP separately provides information services to consumers.

Although no one appealed the Commission's 1996 determination that ISP-bound traffic properly falls within section 251(b)(5) of the Act, certain Bell Operating Companies

1 Petition for Writ of Certiorai, *FCC v. Brand X Internet Services* (Aug. 2004) ("*Brand X Petition*").

2 Reply Comments of Bell Atlantic, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, at 20-21 (May 30, 1996) (arguing that the "most blatant example of a plea for a government handout comes from those parties who urge the Commission to adopt a reciprocal compensation price of zero, which they euphemistically refer to as 'bill and keep. A more appropriate name, however, would be 'bilk and keep'...."). Indeed, Bell Atlantic argued for reciprocal compensation payments for all forms of section 251(b)(5) traffic, including ISP-bound traffic. "If these rates are set too high," Bell Atlantic argued, "the result will be that new entrants, who are in a much better position to selectively market their services, will sign up customers whose calls are predominately inbound, such as credit card authorization centers and **internet access providers.**" *Id.* at 21 (emphasis added). In such a case, "[t]he LEC would find itself writing large monthly check to the new entrant." *Id.*

("BOCs") shortly thereafter began vigorously lobbying the Commission to change the regulatory classification of ISP-bound traffic. The reason for the BOC change in position was obvious: the BOCs wanted to avoid paying compensation to CLECs, some of whom had begun to specialize in serving ISPs. In response, in 1999 the Commission issued its *Declaratory Ruling*[3] to segregate ISP-bound traffic from other 251(b)(5) traffic; however, the D.C. Circuit Court of Appeals vacated that decision.[4]

Subsequent to the vacatur of the *Declaratory Ruling*, the Commission promulgated what has become known as the *ISP Remand Order*.[5] In the *ISP Remand Order*, the Commission set forth a complex set of regulations to limit compensation for ISP-bound traffic, even though the Commission found that no cost difference exists for terminating ISP-bound calls or any other type of local call. As the Commission indicated:

> [W]e see no reason to impose different rates for ISP-bound and voice traffic. The record developed in response to the *Intercarrier Compensation NPRM* and the *Public Notice* fails to establish any inherent differences between the costs on any one network of delivering a voice call to a local end-user and a data call to an ISP. Assuming the two calls have otherwise identical characteristics (*e.g.*, duration and time of day), a LEC generally will incur the same costs when delivering a call to a local end-user as it does delivering a call to an ISP. We therefore are unwilling to take any action that results in the establishment of separate intercarrier compensation rates, terms, and conditions for local voice and ISP-bound traffic.[6]

In spite of a factual finding that no cost differences exist, the FCC radically cut the compensation rate for ISP-bound traffic and went so ~~far as to foreclose~~ certain competitive LECs from collecting any compensation under what's known as the "new market" rule. The Commission's *ISP Remand Order* was again remanded, although not vacated, back to the Commission approximately two years ago.[7]

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[3] Declaratory Ruling in CC Docket 96-98 and Notice of Proposed Rulemaking in CC Docket 99-68, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; *Intercarrier Compensation for ISP-Bound Traffic*, 14 FCC Rcd 3689 (1999) ("*Declaratory Ruling*"), *vacated*, *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

[4] *See Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

[5] Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; *Intercarrier Compensation for ISP-Bound Traffic*, 19 FCC Rcd 9151 (2001) ("*ISP Remand Order*") *remanded*, *WorldCom, Inc. v. FCC*, 228 F.3d 429 (D.C. Cir 2002), *cert. denied*, 123 S. Ct. 1927 (2003).

[6] *ISP Remand Order*, ¶ 90.

[7] *WorldCom, Inc. v. FCC*, 228 F.3d 429 (D.C. Cir 2002), *cert. denied*, 123 S. Ct. 1927 (2003).

After two remands and more than five years of non-stop litigation, the Commission should view skeptically the BellSouth/Verizon position that calls to ISPs do not terminate at the ISP. At bottom, as has always been the case, the BellSouth/Verizon "no termination" position is "inconsistent with the Commission's precedent and fraught with legal difficulties."[8] Rehashing this already-rejected theory would result in "another round of litigation, and, in all likelihood, this issue will be back at the agency in another couple of years."[9] Put another way, it would be déjà vu all over again for this Commission, and such a result would be sure to hamper future Commissions as well.

Under the Commission's Rules and Precedent, ISP-Bound Traffic Terminates at the ISP's Server

As noted in a recent ex parte by AT&T, Level 3, MCI, and Sprint, there can be no doubt under the Commission's rules and precedent that calls to ISPs terminate at the ISPs servers. "Termination" for purposes of reciprocal compensation under section 251(b)(5) means the "delivery of that traffic from [the terminating carrier's] switch to the called party's premises." 47 U.S.C. § 51.701(d). BellSouth and Verizon's GTE predecessor supported the view that "termination is characterized as delivering traffic through the last end-office switch to the end user."[10] There can be no doubt that a call to an ISP satisfies this definition. Indeed, ISPs buy telecommunications services from LECs so that they can receive telephone calls from other end users, and part of the service that a LEC provides is the delivery of traffic from the LEC's switch to the called party's premises, which may happen to be an ISP's server.

By contrast, the BellSouth/Verizon position that a call terminates not upon receipt by the end user but at some other point contradicts the Commission's rules and precedent. As noted above, termination occurs when the carrier hands off the call to the end user. Whether the end user provides an information service (be it Internet access, voicemail, or some other service) has nothing to do with termination. Termination occurs when the call hits the end user's premises, be it a residential consumer, ISP, or other type of business. For these reasons, the *Bell Atlantic* court specifically questioned the Commission's conclusion that a call to an ISP does not "terminate" at the ISP. As the court stated, "the mere fact that the ISP originates further telecommunications does not imply that the original telecommunication does not 'terminate' at the ISP."[11] Approximately five years later, this critical question remains unanswered by the

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8 *ISP Remand Order*, 16 FCC Rcd at 9215 (Commissioner Furchtgott-Roth, dissenting).

9 *Id.*

10 First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, 11 FCC Rcd 15499, ¶ 1031 and n. 2460 ("*Local Competition Order*") (subsequent history omitted).

11 *Bell Atlantic*, 206 F.3d at 7.

Commission. Perhaps the answer is obvious – the Commission has never changed its definition of "termination" and without question a LEC's delivery of a call to any end user – even an ISP end user – results in termination under the Commission's rules and orders. Accordingly, the BellSouth/Verizon position is simply incorrect.

Adoption of the BellSouth/Verizon "No Termination" Theory Would Undermine Other Commission Policy Objectives And Create Substantial Implementation Issues And Litigation

As demonstrated above, under the Commission's rules and precedent calls to ISP end users terminate upon receipt of the call from the ISP's LEC. Quite simply, that is the definition of termination. Any effort by the Commission to expand the definition of termination to include something other than the end point of telecommunications services provided to an end user by a LEC could have disastrous consequences on a number of Commission policies, including regulation of the Internet.

1. **The BellSouth/Verizon proposal would result in regulating information services, including the Internet, under Title II of the Act.**

Since the inception of the 1996 amendments to the Act (and before), the Commission has maintained a bright line between regulation of telecommunications services and information services. The Commission has regulated telecommunications services under Title II of the Act, and information services under Title I of the Act. The Commission's definition of "termination" has supported the separate regulatory treatment of telecommunications services and information services by focusing on the LEC's delivery of telecommunications services to the end user's premises, even in cases where the end user is an information services provider, such as an ISP. By maintaining this bright line, information services have been subject to very light, if any, regulation under Title I. In contrast, telecommunications services have been subject to traditional common carrier regulation under Title II, which requires such things as tariff compliance and federal universal service payments.

The BellSouth/Verizon "end-to-end" theory would eviscerate the Commission's longstanding definition of "termination" and intertwine telecommunications service and information services. There can be no doubt that a LEC's provision of telecommunications services to an ISP goes no further than the ISP's premises, which can constitute equipment collocated with a LEC. From there on out, the ISP provides various types of information services to its customers. The end-to-end analysis supported by BellSouth and Verizon would thus require the Commission to combine the telecommunications service and the information service in order to identify the ostensible "end points" of a call. To the extent these "end points" are in different states (or are largely presumed, without analysis, to be in different states), BellSouth and Verizon would have this Commission exercise its section 201 authority and regulate the call end-to-end under Title II of the Act. Accordingly, the BellSouth/Verizon proposal would result in the Commission's placement of information services within the ambit of section 201 for the first time. Such a result is antithetical to the Commission's longstanding commitment to using a "light touch" to regulate information services under Title I.

2. The BellSouth/Verizon proposal would undermine the Commission's position in the *Brand X Petition*.

As noted above, the BellSouth/Verizon end-to-end analysis requires the Commission to look to the combination of telecommunications services and information services to identify the "end points" of a call. In so doing, the Commission would be forced to bring information services under Title II to demonstrate the "interstate" nature of such calls, and would thus subject information services to traditional common carrier regulation. In addition to contradicting the Commission's policy of regulating information services under Title I, adoption of the BellSouth/Verizon position would gut the Commission's *Brand X Petition*.

In its *Brand X* petition, the question presented by the Commission is whether the Ninth Circuit Court of Appeals erred in holding that cable modem service is both an information service and a telecommunications service. The Commission stated that "the categories of 'information service' and 'telecommunications service' are mutually exclusive; information service providers use telecommunications, but they do not necessarily provide 'telecommunications service' to the public."[12] Put another way, the Commission argued in its petition that a service is either a telecommunication service or an information service, but not both, and accordingly, the Ninth Circuit incorrectly applied the definitions contained in the Act when it characterized cable modem service "as part telecommunications service and part information service."[13]

This same foundational flaw pervades the BellSouth/Verizon end-to-end theory. In order to accept the BellSouth/Verizon view, the Commission would have to find that dial-up calls to ISPs are "part telecommunications service and part information service," such that no termination occurs between the telecommunications service and information service. Such a result, however, would "fail[] to account for the definitional dichotomy" between "telecommunications services" and "information services."[14] Obviously, then, the BellSouth/Verizon position suffers from flaws identical to those raised by the Commission in its *Brand X Petition* to the Supreme Court. Accordingly, adoption of the BellSouth/Verizon "end-to-end" theory in the context of ISP-bound traffic would devastate the *Brand X Petition* and support the view that cable modem service should be regulated as a combined information service and telecommunications service, subject to all of the requirements of common carriage under Title II of the Act, including such things as universal service contributions.

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[12] *Brand X Petition* at 7. The Commission identified "Internet access services like AOL or Earthlink" and "voicemail" as "examples of information services for purposes of the Communications Act."

[13] *Id.* at 18.

[14] *Id.*

3. The BellSouth/Verizon "no termination" theory would result in additional regulatory uncertainty and litigation before the Commission and elsewhere.

Not only would the BellSouth/Verizon "no termination" theory result in regulating information services under Title II of the Act and undermine the Commission's *Brand X* petition, but adoption of the BellSouth/Verizon view would also lead to unnecessary regulatory uncertainty and litigation. For example, it is unclear how carriers would implement "section 201" intercarrier compensation arrangements. Traditionally, carriers have utilized section 252 interconnection agreements to implement section 251(b)(5) of the Act. Indeed, the whole purpose of an interconnection agreement is to address sections 251(b) and (c) of the Act. Moving intercarrier compensation to section 201 could adversely affect the ability of competitive LECs to implement compensation arrangements with other carriers. Similarly, it is conceivable that certain incumbent LECs could argue that competitive LECs may not use section 251 interconnection trunks to send or receive traffic regulated under section 201, including ISP-bound traffic. If allowed to persist, competitive LECs could possibly be forced to establish new trunking arrangements, which would be both excessively expensive and wasteful. Of course, Core cannot pretend to anticipate various other implementation issues that could arise if the Commission were to adopt the BellSouth/Verizon approach, but if past is prologue, implementation will be anything but straightforward.

To the extent implementation issues do arise, they will fall within this Commission's enforcement authority, and the Commission should be prepared to adjudicate them rapidly. Any gaps in the implementation scheme set by the Commission will likely result in litigation before the Commission, and the scope of such proceedings will in all likelihood be very diverse. On the one hand, telecommunications carriers may be forced to litigate traffic exchange issues. Information service providers, by contrast, could be forced to defend themselves against claims that they owe universal service or that they otherwise are subject to the Title II obligations of common carriers. It is difficult to know what litigation might result from Commission adoption of the BellSouth/Verizon position, but there can be no doubt that the BellSouth/Verizon "no termination" proposal will result in substantial litigation, and the Commission must be thoroughly prepared to implement any order it adopts through its various enforcement mechanisms.

Conclusion

As demonstrated above, the BellSouth/Verizon 201 theory would disrupt the Commission's dichotomy between telecommunications services and information services and also undermine it's *Brand X Petition*. Moreover, adoption of the BellSouth/Verizon 201 position is likely to result in significant implementation issues and litigation. Instead of repeating errors of the past, the Commission should look to its precedent and the advice of its predecessors to resolve this issue. As Commissioner Furchtgott-Roth noted over three years ago: "The Commission would act far more responsibly if it simply recognized that ISP-bound traffic comes within section 251(b)(5). To be sure, this conclusion would mean that the Commission could not impose on these communications any rule that it makes up, as the agency believes it is permitted to do under section 201(b),"[15] but it would result in a judicially sustainable order. For all of these reasons, the Commission should rely on section 251(b)(5) in classifying ISP-bound traffic and reject the BellSouth/Verizon 201 theory.

Respectfully submitted,

Michael B. Hazzard
Counsel to Core Communications, Inc.

cc: Scott Bergman
Matt Brill
Jeff Dygert
Dan Gonzales
Jane Jackson
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[15] *ISP Remand Order*, 16 FCC Rcd at 9215-16 (Commissioner Furchtgott-Roth, dissenting).

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September 16, 2004

VIA ELECTRONIC FILING

Marlene M. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98; Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68**

Dear Ms. Dortch:

The purpose of this letter is to reiterate that the Commission should resist any temptation to attempt to regulate ISP-bound traffic under section 201 of the Communications Act ("Act"), 47 U.S.C. § 201. Section 201 is inapplicable to calls to ISPs because: (a) ISPs are not common carriers, and (b) ISPs typically purchase telephone exchange service, which is not interstate. Rather, the telephone exchange services purchased by ISPs are intrastate, and the appropriate compensation mechanism for such traffic is reciprocal compensation under sections 251(b)(5) and 252(d)(2) of the Act, 47 U.S.C. § 251(b)(5), § 252(d)(2). This may not be the specific outcome that the Commission desires, but it is the outcome demanded by the Act.

Section 201 of the Act applies only to the actions of common carriers related to their provision of interstate telecommunications services. 47 U.S.C. § 201. When Congress enacted the 1996 Act, it amended the definition of "common carrier," and the new definition provides that "[a] telecommunications carrier shall be treated as a common carrier under this chapter ***only to the extent*** that it is engaged in providing telecommunications services." 47 U.S.C. § 153(44) (emphasis added). Thus, for ISP-bound traffic to fit within the framework established by Congress in section 201, ISP-bound traffic would have to be interstate, and any such interstate transmission would have to have to meet the definition of a telecommunications service provided by a common carrier. ISP-bound traffic satisfies none of these prerequisites, and therefore ISP-bound traffic lawfully cannot be placed under section 201.

First off, a telephone call to an ISP is neither interstate nor exchange access under the Act. Rather, the telecommunications service that ISPs purchase from LECs falls squarely within the Act's definition of telephone exchange service:

> TELEPHONE EXCHANGE SERVICE. – The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

47 U.S.C. § 153(47). ISPs subscribe to LEC services within a given exchange area, as defined by the state commissions and LEC local exchange tariffs. Accordingly, to the extent that ISPs purchase telephone exchange service, there can be no doubt that such a service is intrastate and therefore outside of the scope of 201.

Second, even if it could be said that the underlying "transmission" between one end user and an ISP end user is interstate (even though ISPs buy local telephone exchange service), ISP-bound calls still would not properly fall within section 201 because any ostensibly interstate portion of the transmission does not constitute a "telecommunication service" provided by a "common carrier." "Telecommunications services" are defined as "the offering of telecommunications for a fee directly to the public or such classes of users as to be effectively available to the public." *Id.* § 153(46). ISPs simply do not provide telecommunications services; rather, they provide information services, which are outside of the parameters of section 201.

Section 201 of the Act applies only to common carriers in activities related to their provision of interstate telecommunications services.[1] ISPs are neither common carriers nor do they provide interstate telecommunications services. As the *Verity* court noted:

> The FCC long has distinguished between basic telecommunications carriage – principally ordinary telephone and long distance service – and enhanced services...." Indeed, "the FCC declined to institute comprehensive regulation for enhanced services and found that vendors of enhanced services, defined as anything more than basic transmission service, were not engaged in common carrier activity." Furthermore, the "Telecommunications Act of 1996 likewise distinguishes between telecommunications services and information services, stating that "a telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services."

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[1] *See, e.g. Federal Trade Commission v. Verity International, LTD*, 124 F.Supp. 193, 201-202 (2000) (S.D.N.Y.); *Global NAPS Bell Atlantic-New Jersey, Inc.*, 287 F.Supp.2d 532, 546 (2003).

Verity, 124 F.Supp. at 201-202 (citations omitted). The *GNAPS* court likewise noted that the "statute is unambiguous, 'a telecommunications carrier shall be treated as a common carrier under this chapter *only* to the *extent that it is engaged in providing telecommunications services*." *GNAPS*, 287 F.Supp.2d at 547 (emphasis original). Because ISP are not common carriers and do not provide interstate telecommunications services, calls to ISPs simply cannot fall within the ambit of section 201.

For all of these reasons, the Commission should avoid any effort to shoehorn ISP-bound traffic into section 201.[2] It simply does not fit. Rather, the Commission should follow the plain language of the statute and find that ISP-bound calls fall within the confines of section 251(b)(5) and 252(d)(2). This may not be the outcome that the Commission otherwise might prefer, but it is the only outcome that is consistent with Congress' intent as set forth in the Act.

Respectfully submitted,

Michael B. Hazzard
Counsel to Core Communications, Inc.

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[2] In its September 14, 2004 letter to the Commission in these proceedings, Core identified a number of legal and policy problems that inevitably would result were the Commission to classify ISP-bound traffic under section 201, and Core will not repeat those arguments here.